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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,657	01/21/2004	Su Chen	CHEN-0002	5157
50010 7590 09/27/2007 LAW OFFICE OF MICHAEL A. BLAKE 112 BROAD STREET MILFORD, CT 06460			EXAMINER BARNHART, LORA ELIZABETH	
			ART UNIT 1651	PAPER NUMBER
			MAIL DATE 09/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10762657	1/21/04	CHEN ET AL.	CHEN-0002

LAW OFFICE OF MICHAEL A. BLAKE  
112 BROAD STREET  
MILFORD, CT 06460

**EXAMINER**

Lora E. Barnhart

ART UNIT	PAPER
1651	20070921

**DATE MAILED:**

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**Commissioner for Patents**

### OFFICE COMMUNICATION

The reply received 12/22/06 has been entered, pursuant to the granting on 9/21/07 of the petition to revive the application. In this reply, applicant amended claims 1-4. No claims were added or deleted.

Since applicant has received an action on the merits for the originally presented invention, *i.e.*, a composition, this invention has been constructively elected by original presentation for prosecution on the merits. See the Office action mailed 12/23/04, page 3. Accordingly, claims 1-4 as currently drafted are directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

This amendment is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are drawn to a method of preparing polyunsaturated fatty acid-containing phosphatidylserine, *i.e.* a method of making the composition examined in the first Office action on the merits.

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made **and action given** on the elected subject matter, in this case the composition comprising phosphatidylserine and phosphatidic acid. See MPEP § 819. The examiner clearly indicated that the product, and not any method, was being examined in the first Office action. Shifting to a method at this point in prosecution is not a matter of right.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the

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omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lora E. Barnhart whose telephone number is 571-272-1928. The examiner can normally be reached on Monday-Thursday, 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lora E Barnhart

A handwritten signature in black ink, appearing to be 'Lora E. Barnhart', with a long horizontal flourish extending to the right.